TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 765.

ANTONIO YZNAGA DEL VALLE, PLAINTIFF IN ERROR,

vs.

CHARLES H. HARRISON AND SAMUEL H. LYONS, INTERVENORS AND THIRD OPPONENTS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED OCTOBER 9, 1876.

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INDEX.

	Original.	Print.
Fieri facias and marshal's return and agreement	1	1
Intervention and third opposition of Harrison and Lyons	3	7
Order and marshal's return	4	11
Lease, annexed to petition of intervention	5	12
Answer of Del Valle to intervention	7	19
Amended intervention and third opposition of Harrison and Lyons	8	20
Motion of Harrison and Lyons, order and marshal's return	9	22
Exception to supplemental petition and third opposition	9	24
Agreement	10	26
Exception overruled	11	27
Answer to supplemental petition, &c	11	28
Submission of rule and intervention	12	29
Remittitur by Harrison and Lyon	12	29
Order leave for Harrison and Lyon to remit	12	30
Waiver of the jury	13	30
Judgment from minutes	13	31
Motion for new trial	14	33
Order new trial refused	15	36
Judgment from judgment-book	15	36
Petition for writ of error	16	38
Order writ refused	17	41
Petition for writ of error	17	41
Order allowing the same	17	43
Order of Judge Woods fixing amount of bond	17	43
Bond for writ of error	18	44
Clerk's certificate	19	47
Writ of error	19	48
Citation	20	49

1 UNITED STATES OF AMERICA.

Circuit court of the United States, fifth circuit and district of Louisiana.

ANTONIO YZNAGA DEL VALLE
vs.
LEMUEL P. CONNER. } No. 7120.

Fi. fa.—Issued October 22d, 1874; returned by U. S. marshal and filed December 31st, 1874.

Circuit court of the United States, for the fifth circuit, holding sessions in and for the district of Louisiana.

The President of the United States to the marshal of the district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded that you demand from Lemuel P. Conner the sum of twelve thousand seven hundred and forty-three $\frac{13}{100}$ dollars, with 8 % interest thereon from 23rd January, 1874, till paid, and costs of suit —(clerk's costs, $22.00; atty. fee, $20.00)—cash which Antonio 2 Yznaga del Valle lately recovered by judgment of the circuit court of the United States for the fifth circuit and district of Louisiana; and if the same be not paid on demand, that then you cause the same to be made out of the personal estate of the said Lemuel P. Conner in your district, if sufficient personal estate can be found therein; but if sufficient personal estate cannot be found in your district, that then you cause the same to be made out of the real estate of the said Lemuel P. Conner in your district whereof he was owner on the 24th day of March, 1874, into whose hands soever the same may have come; and that you have those moneys before our said court to render to the said Antonio Yznaga del Valle, for the judgment aforesaid, on the 70th day from the date hereof, together with this writ.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 22nd day of October, A. D. 1874, and 99th year of the Independence of the United States.

[SEAL.] (Signed) F. B. VINOT,
Dy. Clerk.

Marshal's return.

Received Octo. 22d, 1874, by the U. S. marshal, and on the 24th 3 day of the same month and year seized and took into my possession the following-described property, to wit: (34) thirty-four mules, 6 cane-carts, 2 bagasse-carts, four oxen, 28 two-horse plows, 1 stubble-shaver, 3 flukes, 5 harrows, 30 hoes, 1 lot plantation gear, 1 lot blacksmith-tools, 12 lamps for sugar-house, 450 cords of wood, 1,000 bushels of corn, 165 acres grinding-cane, 30 acres seed-cane, 20 acres planted cane, 10 hogshead sugar, 15 barrels molasses, 20 cane-knives, 12 axes, 150 empty hogsheads, 200 empty barrels, and the growing crop on the Ricard plantation, and duly notified the defendant, Lemuel P. Couner, of such seizure according to law, and under an agreement (filed in this office) between the parties to the record, a copy of which is hereto annexed at the time of filing said agreement. I have taken off the crop seized and shipped the same to Avendano Brothers, merchants of New Orleans, my agents herein under said agreement, to be by them

sold, the proceeds to be accounted for by them to me, which shipments is not yet completed. I also advertised the mules and other property seized, other than the molasses and sugar, to be sold on the 2nd of January, 1875, at the town of Plaquemines, parish of Iberville, State
4 of Louisiana. Said advertisement of sale was made in the Iberville Republican, a weekly newspaper published in Plaquemines, Iberville Ph., on the 19th and 26th December, 1874, and the 2nd of January, 1875. Sale to take place on the said Ricard plantation.

The time for the return of this writ having expired, the same is returned executed so far as above set forth, and a copy of said writ, with the partial return hereon, is requested from the clerk of the court.

New Orleans, Decr. 31st, 1874.

(Signed) C. R. STEELE,
Dy. U. S. Marshal.

Agreement.—Filed with marshal's return on fi. fa. Dec'r 31st, 1864.

U. S. circuit court, district of Louisiana.

A. YZNAGA DEL VALLE
vs.
LEMUEL P. CONNER.

The undersigned parties of the above suits, and others who will become parties hereafter, in order to secure the crops now seized, consent—

1st. That to the claims of the laborers who have made the crop they will not urge the plea that their privilege was not recorded, except against those who do not go on and take off the crop.

2d. The U. S. marshal is requested to employ the defendant
5 to take off the crop, his compensation to be fixed by the court, and payment to be made to him out of the proceeds, although he is the defendant, but his compensation shall be five hundred dollars, and more, if the court should decree him entitled to it; (150) one hundred and fifty dollars to be paid out of the first proceeds, and the balance when the crop is made and sold.

3rd. The U. S. marshal is requested to ship the crop to Messrs. Avendano Bros., of New Orleans, appoint them keeper thereof after it leaves the plantation. They will sell it, and, after deducting monies advanced to the marshal for the plaintiff, costs, charges, and other expenses, hold nett proceeds for the U. S. marshal, subject to the order of the court.

4th. If the nett proceeds of the crop be not sufficient to pay the privileges and the judgment of the plaintiff in full, then the amount paid to the laborers for wages due up to the day of seizure shall be a charge pro rata on the portion of said proceeds allotted the respective claims.

5th. The crop in the sugar-house, on its way to the city, and in the city, if warehoused, shall be insured as follows: In the sugar-
6 house, for ($5,000) five thousand dollars, for sixty (60) days, and on the river and in the city to its value, and the costs and charges and other expenses deducted from the sales.

6th. This agreement does not imply the correctness of the claims of the respective creditors, neither does it admit the privilege claimed by them—those being questions for the court.

7th. The U. S. marshal will ship the crop as fast as made and fit for market.

8th. All advances, costs, and charges shall be first taken out of any and all proceeds of sales.

9th. If this agreement is not signed by all the creditors, it is to remain in force and be carried out as far as is practicable by those who do sign it.

New Orleans, 27th October, 1874.

(Made up in duplicate.)

(Signed) T. H. KENNEDY,
Atty. for succession of Dr. Wm. N. Mercier.

(Signed) J. DICKSON BRUNO.

(Signed) LEMUEL P. CONNER.

(Signed) GEO. L. BRIGHT,
Atty. for A. Yznaga del Valle.

7 *Intervention and third opposition of Chas. K. Harrison and Saml. H. Lyon, landlords, and prayer for provincial seizure.—Filed December 1st*, 1874.

U. S. circuit court, district of Louisiana.

A. YZNAGA DEL VALLE
vs.
LEMUEL P. CONNER. } No. 7120.

To the honorable the judges of the circuit court of the United States for the 5th circuit and district of Louisiana:

The petition of intervention and third opposition of Charles K. Harrison and Samuel H. Lyon, both residents of the city of Baltimore, respectfully represent:

That they are true and lawful creditors of Lemuel P. Conner, defendant herein, in the sum of ten thousand nine hundred ($10,900) dollars, for the following reasons, viz:

That on the 10th of March, 1871, by act before J'h Amedée Landry, notary public in and for the parish of Iberville, State of Louisiana, duly recorded, your petitioners leased to Lemuel P. Conner the plantations described in said act, being the same now under the control and management of the U. S. marshal by virtue of the seizure made by plaint-
8 iff in this, on the terms and conditions specified in the act of lease above mentioned, a certified copy whereof is hereto annexed for reference.

That, according to the conditions of said lease, the said L. P. Conner is indebted to your petitioners for the years 1873 and 1874 in the sum of five thousand dollars each, payable on the 31st of December, 1873 and 1874, making ($10,000) ten thousand dollars.

That said Conner did also bind himself to pay all taxes (State, parish, & other) to become due on said property and collectable during the period covered by said lease, which taxes now due amount to ($900) nine hundred dollars.

That for the payment of said sum your petit'n'rs are entitled to a privilege and preference on the net proceeds of the crop raised and gathered in the present year, 1874.

That the said crop of 1874 now being gathered has been seized by the plaintiff in this case on fi. fa., in suit No. 7120, and that the said crop and proceeds are now held by Avendano Brothers, commission-merchants, in New Orleans, subject to the further order of this honorable court.

That your petitioners are entitled to be paid by privilege and
9 preference over the said A. Y. del Valle, the seizing creditor herein, out of the said proceeds of crop after payment of laborers' wages and expenses of cultivation.

That your petitioners, by virtue of their lien and privilege, are entitled to a provisional seizure of the nett proceeds of this year's crop.

Petitioners therefore pray: That they have leave to file this their petition of intervention and third opposition. That the said Lemuel P. Conner be cited to answer this petition, and, after due proceedings, condemned to pay to your petitioners the said sum of ten thousand nine hundred dollars, ($10,900,) with interest and costs, by privilege and preference out of the proceeds of crop. That a writ of provisional seizure issue in favor of petitioners against the said proceeds of crop. That S. B. Packard, United States marshal, and Avendano Brothers, of New Orleans, be served with a copy of this petition and ordered to retain in their hands, subject to the further order of this honor'ble court, an amount sufficient of the proceeds of crop to pay and satisfy your petitioners' claim of ($10,900) ten thousand nine hundred , with interest and costs. That A. Y. del Valle, plaintiff in this case, be
10 also served with a copy of this petition, and that after due proceedings had judgment be rendered in favor of your petitioners, ordering them to be paid by privilege and preference out of the nett proceeds of crop over all other claims of the creditors of the said Lemuel P. Conner.

And petitioners pray for general relief, &c.

(Signed) ARMAND PITOT AND
(Signed) M. M. COHEN,
Of Counsel for Petitioners.

Armand Pitot, attorney and agent of Chs. K. Harrison & Saml. H. Lyon, being duly sworn, says: That the deft., L. P. Conner, is indebted to the intervenors to the amount and in the manner aforesaid, to the best of his knowledge and belief, and that he is afraid of being deprived of his lein on the proceeds of the crop of the plantation leased to said L. P. Conner.

(Signed) ARMAND PITOT.

Sworn to and subscribed before me this 1st day of December, 1874.
(Signed) F. B. VINOT,
U. S. Comm'r.

11 *Order.*

Let the within petition of intervention and third opposition be filed.

Let a writ of provisional seizure issue herein as prayed for and according to law, and let S. B. Packard, United States marshal, and the commercial firm of Avendano Brothers be ordered to retain in their hands, subject to the further order of this court, an amount sufficient of the proceeds of the crop to pay and satisfy petitioners' claim of ten thousand nine hundred dollars, with interest and costs as prayed for.

(Signed) W. B. WOODS,
U. S. Circuit Judge.

Marshal's return.

Received December 8th, 1874, by the U. S. marshal, and on the 9th day of December, 1874, served a copy hereof on A. Y. del Valle and

Avendano Bros., by handing them to Geo. L. Bright, attorney of record for the plaintiff herein; served S. B. Packard, U. S. marshal, by handing it to him in his office in this city.

(Signed) S. W. REED,
Dy. U. S. Marshal.

12 *Lease.—Filed with petition of intervention December 1st, 1874.*

U. S. circuit court, dist. of La.

A. YZNAGA DEL VALLE
vs.
LEMUEL P. CONNER. } No. 7120.

STATE OF LOUISIANA,
Parish of Iberville:

Be it known that on this day, before me, Joseph Amedée Landry, a notary public in and for the parish of Iberville, State of Louisiana, aforesaid, duly commissioned and sworn, personally came and appeared Mr. Lawrence L. Butler, of the parish of Iberville, herein acting as the true and lawful attorney in fact and agent of Charles K. Harrison and Samuel H. Lyon, the husband of Emily K. Harrison, deceased, and representing her in these presents, both residents of the city of Baltimore, Maryland, and also Lemuel P. Conner, residing in the parish of Iberville, State of Louisiana, who declared that, whereas, by an authentic act passed before Henry Desobry, a notary public in and for the parish of Iberville, bearing date February 20th, 1869, the said Butler acting therein as the true and lawful attorney and agent in fact of
13 the said Chas. K. Harrison and of the said Samuel H. Lyon, husband and universal legatee of Emily K. Harrison, deceased, did lease to the said Lemuel P. Conner, who accepted the same, certain plantations situated in the parish of Iberville, State of Louisiana, belonging to the said Charles K. Harrison and Emily K. Harrison jointly and in equal parts, and known as the "Annandale and Ricard plantations," as the same are sufficiently designated and described in the said act of 20th February, 1869, above mentioned, and upon the terms and conditions set forth and detailed in said act, a duly certified copy whereof is hereto annexed for reference; and whereas, subsequently to the date of said act of lease, the said Emily K. Harrison contracted marriage with the said Samuel H. Lyon, and has since departed this life, and is now represented by the said Lyon as her instituted sole heir and universal legatee, who has been duly recognized as such and sent into possession of her estate by an order of the honorable the parish court in and for the parish of Iberville, rendered in December, 1870: Now, then, the said Butler, in his capacity of agent and attorney in
14 fact of the said Charles K. Harrison and of the said Samuel H. Lyon and the said Conner, do declare that, with a view to render less onerous to the said Conner the performance of the obligations resting upon him in virtue of the said lease of February 20th, 1869, and for the considerations hereinafter expressed, they have agreed, and do hereby agree and covenant, that the term or duration of the said lease of 20th February, 1869, shall be, and the same is hereby, extended for the period of two years, so as to expire on the thirty-first of December, eighteen hundred and seventy-five, instead of expiring, as provided by said act of the 20th of February, 1869, on the 31st December, 1873; and that the said Conner, lessee as aforesaid, shall pay the sum of five

thousand dollars rent for the year ending the thirty-first December, eighteen hundred and seventy-four, and the sum of six thousand dollars rent for the year ending thirty-first December, eighteen hundred and seventy-five, each sum to be due and demandable on the thirty-first of December of the year for which the same is due.

And it is further agreed by and between the parties aforesaid
15 that, in addition to the payment of the rent aforesaid, the said extension is granted and accepted on the following conditions, to wit:

1°. That all the terms and conditions contained in the said lease of February 20th, 1869, in relation to the care and good administration of the said plantations, the maintenance and repair of the buildings, mills, machinery, fixtures, and other appurtenances of the same, the fences, bridges, and ditches, and generally all the obligations assumed by the said lessee as the conditions of the said lease of 20th February, 1869, including the payment of all taxes, State, parish, or others, which shall become due on said property and collectable during the period covered by the said lease, and the extension thereof herein provided for, and the observance of all police-regulations of the State or parish, shall be extended to and binding upon the said lessee during all the period of the said extension, and that at the expiration thereof the buildings, machinery, and appurtenances of said plantations shall be left by the said lessee in thorough repair and good running order and condition, as required by the terms and conditions embodied
16 in the act of February 20th, 1869, aforesaid.

Taxes.

2°. That one hundred arpents of land of the Ricard plantation and one hundred and twenty-five arpents of land of the Annandale plantation shall be planted in cow-peas in the year eighteen hundred and seventy-four, and the same land replanted in cow-peas in eighteen hundred and seventy-five.

Seed-cane to be saved.

3°. That sufficient good seed-cane shall be provided and put up on the Ricard plantation during the year eighteen hundred and seventy-five, to plant well, of two and a lap, one hundred arpents of land on the same plantation the ensuing year, and that sufficient good seed-cane shall be provided and put up on the Annandale plantation in the year eighteen hundred and seventy-five to plant well and as above explained one hundred and twenty-five arpents of land on the Annandale plantation the ensuing year; and that in consequence of the present clause, the corresponding clause in the second paragraph of the fifth article of the said act of 20th February, 1869, relating to seed-cane to be left on the said plantations at the expiration of the year eighteen hundred and seventy-three is annulled.

17 4°. And in consideration of the foregoing, and on the express condition that all the other obligations assumed and resting upon the said Conner, under the said act of 20th February, 1869, and the present act, shall be by him well and faithfully performed, it is agreed hereby that the said Conner shall be released from the payment of the sum of three thousand dollars stipulated in the former act as rent for the year eighteen hundred and seventy-one, or of any other sum for rent for said year, and, furthermore, that the sum of six thousand dollars, stipulated in said former act as rent for the year eighteen hundred and seventy-three, be reduced to the sum of five thousand dollars, and that in all other respects, except so far as modified by this act, the terms and conditions of the said act of 20th February, 1869, are expressly affirmed and maintained.

The United States internal-revenue duty, amounting to twenty-seven

dollars and fifty cents, required by law for this act, is paid, and the stamps for that amount are hereunto duly affixed and cancelled according to law.

Done and passed at the parish of Iberville the tenth day of
18 March, A. D. eighteen hundred and seventy-one, in presence of Messrs. Alcee Gaiénnié and Henry Desobry, competent witnesses, residing in this parish, who have signed their names with the said appearers and me, notary, after reading thereof.

(Original signed) L. L. BUTLER,
Agt. & Atty. in Fact of Chas. K. Harrison & Samuel H. Lyon.
LEMUEL P. CONNER.

Attest:
ALCEE GAIÉNNIÉ.
HENRY DESOBRY.

J. A. LANDRY, *Not. Pub.*

RECORDER'S OFFICE.

I do hereby certify the foregoing to be a true and correct copy of the original act of lease on file and of record in my office, recorded in Miscellaneous Book 3, entry 350, March 11th, 1871.

Witness my hand and seal of office this 14th day of November, A. D. 1874.

[SEAL.] L. E. DERHART, *Recorder.*

19 *Answer of A. Yzanaga del Valle to intervention of Harrison & Lyon.—Filed December 16th,* 1874.

Circuit court of the United States for the 5th circuit & district of Louisiana.

A. YZNAGA DEL VALLE
vs.
LEMUEL P. CONNER. } No. 7120.

Now comes into court A. Yzanaga del Valle, and, for answer to the petition of intervention and third opposition of Charles K. Harrison and Saml. H. Lyon, denies all and singular the allegations therein made, except such as may be herein specially admitted.

He admits that a lease, as stated in petition, was at one time made by the intervenors with Lemuel P. Conner, but he alleges that it was subsequently cancelled and annulled, and another lease was made whereby the rent for the year 1874 was fixed at one thousand dollars.

Your respondent alleges that this lease was never recorded in the parish where the property to be affected is situated, and therefore, by the constitution of 1868, art. 123, the intervenors cannot have a privilege.

The premises considered, your respondent prays that the intervention and third opposition of Charles K. Harrison and Samuel H.
20 Lyon be dismissed, and that the marshal be ordered to pay to your respondent the full amount of the proceeds is his hands.

And your respondent prays for general relief.

GEO. L. BRIGHT, *Atty.*

DEC., '74.

Amended intervention and 3rd opposition of Harrison & Lyon.

U. S. court, district of Louisiana.

A. Y. DEL VALLE
vs.
L. P. CONNER.

The amended intervention and third opposition of Charles K. Harrison and Samuel H. Lyon showeth :

That what they now claim from Lemuel P. Conner is as follows :

That the former lease was cancelled and a verbal lease made on the following terms and conditions, viz : For the year 1873, five hundred dollars ($500) in money, the taxes on the two plantations, the insurance on the sugar-house and planting in and about one hundred acres of cane for 1874.

For the year 1874, one thousand dollars ($1,000) in money, all
21 the taxes on the Anandale & Ricard plantations, the insurance on the sugar-house at Ricard, and planting in and about one hundred acres of cane for 1875.

That the conditions of the verbal lease for 1875 is not here recited because the same has been cancelled, and intervenors therefore only claim, with privilege, lien and pledge on the growing crop superior to all other creditors, the rent of one thousand dollars ($1,000) for the year 1874 and of eight hundred & thirty-nine dollars and thirty-five cents ($839.35) for taxes for the year 1873, and of insurance amounting to three hundred dollars, ($300.)

That, in addition to the foregoing, they claim the five hundred dollars ($500) aforesaid for the year 1873, but without privilege.

Wherefore intervenors pray that a copy of this amended intervention be served on said A. Y. del Valle, and that he be cited to appear and answer thereto, and that after due proceedings had they have judgment in their favor for said sum of one thousand dollars, ($1,000.) and of eight hundred and thirty-nine dollars and thirty-five cents, ($839.35,) and of three hundred dollars, ($300,) with lien, pledge, and privilege on the growing crop, to be paid with preference over all other creditors, and for judgment for said sum of five hundred dollars, ($500.)

22 And petitioners pray for general relief, &c.

(Signed) ARMAND PITOT,
" M. M. COHEN,
Of Cl.

Marshal's return.

Received Decr. 29th, 1874, by the U. S. marshal, and on the 30th day of same month and year served a copy of the within-amended intervention and third opposition of George L. Bright, by handing the same to him in person in this city.

New Orleans, Decr. 30th, 1874.

(Signed) C. R. STEELE,
Dy. Marshal.

Service accepted and citation waived.

(Signed) J. N. BRICKELL,
Atty. of I. D. Bruno.

Motion of Harrison & Lyon and order.—Filed January 13th, 1875.

U. S. circuit court, district of Louisiana.

A. Y. DEL VALLE
vs.
LEMUEL P. CONNER. } No. 7120.

On motion of A. Pitot and M. M. Cohen, attorneys for Harrison & Lyons, intervenors and third opponents in this case, and on sug-
23 gesting to the court that the said plaintiff has seized certain seed-cane which is attached to the land owned by these opponents and now in their possession, and that said seed-cane is immoveable by destination, and under the laws of Louisiana cannot be sold separately from the land, which land is not seized in this case, and which seed-cane is absolutely necessary for the making of the coming crop:

It is ordered that the said A. Y. del Valle show cause on the 25th day of January, 1875, why the said seizure should not be set aside on the ground herein above stated, and these opponents permitted to go on with the planting of the seed-cane on their giving bond & security in a sum to be fixed by the court to respond to all legal damages which the said A. Y. del Valle may suffer by reason thereof, reserving all his rights, if any, on the appraised value of said cane.

(Signed) W. B. WOODS,
U. S. Circuit Judge, District of Louisiana.

Marshal's return.

Received January 14th, 1875, by the U. S. marshal, and on the same day, month, and year served a copy hereof on A. Y. del Valle,
24 within named, by handing it to Geo. L. Bright, esq., atty. of record for said del Valle, in person, in this city.

New Orleans, January 14th, 1875.

(Sig'd) C. R. STEELE,
Dy. U. S. Marshal.

Exception to supplemental petition and 3rd opposition of Harrison & Lyon.—Filed January 20th, 1875.

U. S. circuit court, dist. of Louisiana.

A. YZANAGA DEL VALLE
vs.
LEMUEL P. CONNER. } No. 7120.

Exception to amended intervention and third opposition of Chas. K. Harrison and Samuel H. Lyons.

Now comes into court A. Yznaga del Valle, and, for exception to the amended intervention and third opposition of Chas. K. Harrison and Samuel H. Lyons, pleads:

That on the 8th day of Decr., 1874, they filed in this court and in this suit a petition of intervention and third opposition, claiming $10,000 rent for the years 1873 & 1874, by reason of a written lease annexed to their intervention.

That on the 1st day of Decr., 1874, they filed in this court, in the suit of Harrison & Lyons vs. A. Yznaga del Valle, No. 7305, a bill in equity

based on the aforesaid lease, and obtained thereon a writ of injunction; that on the day of , 187 , they filed in the same suit a supplemental and amended bill in equity, based on the same lease, and praying for an additional writ of injunction.

And this defendant shows that he had seized and was about to
25 sell the lease and right, title, and interest of Lemuel P. Conner to certain plantations by virtue of a lease, which your defendant was informed was for a small rent, much less onerous than the lease set forth by said Harrison & Lyons in their original intervention and in their aforesaid bills in equity.

But it appearing that the said Harrison & Lyons asserted the lease set forth by them in said intervention and bills in equity, which lease was most onerous and rendered the right of Lemuel P. Conner thereto of no value, your appearer was induced and forced to release his seizure; that immediately upon the release the said Harrison & Lyons, by an agreement with Lemuel P. Conner, the defendant in execution, cancelled and annulled the existing *the* lease, which was most advantageous to said Conner and which under the seizure would have sold for a considerable amount.

This defendant shows that the proceedings to recover $10,000 upon a lease which the plaintiffs knew had been cancelled and annulled, was an attempt to defraud this defendant, and by which they have actually succeeded to the extent of the value of the existing lease.

Wherefore this defendant, for exception, pleads that the said Harrison & Lyons are estopped from denying the judicial admissions made:
26 1°. In the original petition and intervention filed on the 8th day of December, 1874.

2°. In the bill in equity filed in suit No. 7305 on the 1st day of December, 1874.

3°. In the supplemental bill in equity filed in suit No. 7305 on the day of , 187 ; and the supplemental and amended intervention and third opposition filed on the 29th day of December, 1874, should be dismissed.

And should their exception be overruled, he prays leave to answer, and for general relief.

(Signed) GEO. L. BRIGHT,
Counsel for Yznaga.

JANUARY 20th, 1875.

Agreement.—Filed March 25th, 1875.

U. S. circuit court.

A. YZNAGA DEL VALLE
vs.
LEMUEL P. CONNER } No. 7120.

Whereas the plaintiff has seized and is about to sell some cane in windrow, now on the plantation lately occupied by the defendant, but belonging to Harrison & Lyon; and whereas Messrs. Harrison & Lyon contend that the plaintiff had no right to make the seizure and sell the cane, as it belongs to them: Now it is agreed between del Valle & Harrison & Lyon that the value of the said seed-cane is seventeen hundred & fifty dollars.

27 Whereas Harrison & Lyons have already filed in this court proceedings claiming the cane, viz, a rule taken on day of

Jany., 1875, and fixed for to-day, 25th Jany., claiming that said cane belongs to the land and to the owners thereof:

It is agreed between Harrison & Lyons & Yznaga that, in case Harrison & Lyons fail in said rule, they will, together with their surety and in solido, pay to Yznaga the aforesaid value of the cane, viz, seventeen hundred & fifty dollars, with 8 % per annum interest from this day. In consideration of that agreement Yznaga releases his seizure on the seed-cane.

N. Orleans, Janry. 25th, 1875.

(Sig'd) ARMAND PITOT,
" M. M. COHEN,
Attys. for H. & L.
EMILE DUPRÉ,
Agent for Harrison & Lyon.

I lend myself as surety for and guarantee the foregoing obligations of Harrison & Lyons.

New Orleans, Janry. 25th, 1875.

(Sig'd) DAVID URQURHART.

Exception ovevruled.—Extract from the minutes March 25th, 1875.

United States circuit court, fifth circuit and district of Louisiana.—November term, 1874.

NEW ORLEANS, *Thursday, March 25th*, 1875.

Court met pursuant to adjournment.

Present, Hon. W. B. Woods, circuit judge.

A. YZNAGA DEL VALLE
vs.
LEMUEL P. CONNER. } No. 7120.

The exception to supplemental petition and opposition of Harrison & Lyons, the rule and intervention herein, were called up. Present, G. L. Bright, M. M. Cohen, A. Pitot, and J. N. Brickell. When, after hearing the evidence and argument, it is ordered that the exception be overruled, and that the rule and intervention be continued and tried together on 7th April, 1875, at 11 a. m.

28 *Answer to the supplemental and amended petition of Harrison & Lyons, intervenors.—Filed March 27th*, 1875.

United States circuit court district of Louisiana.

A. YZNAGA DEL VALLE
vs.
LEMUEL P. CONNER. } 7120.

Answer to the supplemental and amended petition of Harrison & Lyons, intervenors.

Now comes into court A. Yznaga del Valle, and, expressly reserving the benefit of the plea of estoppel filed by him, for answer says:

He denies all and singular the allegations contained in the supplemental and amended petition of Harrison & Lyons; and for further answer say' that the intervenors, having claimed upon the allegations

contained in their original petition, cannot be heard upon those in the supplemental petition.

Respondent prays that the intervention of Harrison & Lyons be dismissed, and for general relief.

(Signed) GEO. L. BRIGHT, *Atty.*

29 *Submission of rule and of all interventions.—Extract from the minutes April 7th, 1875.*

A. YZNAGA DEL VALLE *vs.* LEMUEL P. CONNER. } No. 7120.

This cause came up for hearing on the rule and all interventions.

Present, Geo. L. Bright, A. Pitot, M. M. Cohen, J. N. Brickell, and Wm. Grant.

When, after hearing the pleadings, evidence, and argument, the court took time to advise.

Remittitur by Harrison & Lyons.—Filed April 8th, 1875, at 10½ a. m.

United States circuit court.

A. Y. DEL VALLE *vs.* LEMUEL P. CONNER. } No. 7120.

On the intervention and 3rd opposition of Harrison & Lyons.

Harrison & Lyons remit, renounce, and discontinue all of their intervention and third opposition except as to their claim for rent	$1,000	00
For taxes	838	50
Insurance 45 days, at the rate of $300 per annum, with privilege [in pencil]	37	50

(Signed) M. M. COHEN,
For self & A. Pitot, Attys. for Harrison & Lyons.

30 *Order.—Leave to Harrison & Lyons to remit.—Extract from the minutes April 8th, 1875.*

A. YZNAGA DEL VALLE *vs.* LEMUEL P. CONNER. } No. 7120.

On motion of M. M. Cohen and A. Pitot, attorneys for Harrison & Lyons, intervenors and 3rd opponents, it is ordered that Harrison & Lyons have leave to remit, discontinue, and renounce, as they now do, all of their intervention and third opposition except as to their claim for rent, $1,000, their claim for taxes, $838.50, and their claim for insurance for 45 days, at the rate of $300 per annum, all with privilege and preference as lessors.

Waiver of jury.—Filed April 9th, 1875.

A. YZNAGA DEL VALLE
vs.
LEMUEL P. CONNER. } 7120.

On rule to dismiss and the interventions. In this case it is agreed to waive the jury and try the matter before the court.

April 7th, 1875.

(Signed) M. M. COHEN.
31 (Signed) J. N. BRICKELL.
" WM. GRANT.
" ARMAND PITOT.

It should be on rule to release seed-cane from seizure. Rule taken January 13th, 1875, and intervention.

(Signed) GEO. L. BRIGHT,
Atty. for Yznaga.

Judgment.—Extract from the minutes, November term, 1874.—April 9th, 1875.

Circuit court of the United States, fifth circuit & district of Louisiana.

NEW ORLEANS, *Friday, April 9th*, 1875.

Court met pursuant to adjournment.
Present, Hon. W. B. Woods, circuit judge.

A. YZNAGA DEL VALLE
vs.
LEMUEL P. CONNER. } No. 7120.

The parties having in writing waived the jury, the rule to dismiss the seizure of certain seed-cane and the interventions in the cause came on to be heard before the court upon the pleadings and proofs, and were argued by counsel:

On consideration whereof the court finds generally for the plaintiffs in the rule taken on 13th January, 1875; and it is therefore or-
32 dered that said rule be sustained, and that the seizure of said seed-cane, made at the instance of Yznaga del Valle, be set aside.

It is further adjudged and decreed that the intervention of Sebastian Gomez be dismissed, he having lost his lien and privilege for neglecting to have his claim recorded as required by law.

It is further adjudged and decreed that the lien and privilege of the other intervenors be recognized, and that they be paid by preference out of the proceeds in this case in the hands of the marshal the following sums, to wit:

1st. Jeremiah Supple, advances for making crop, $1,188.83, with 5 % interest from 11th Novr., 1874; item $118.13½, family supplies, being rejected for want of lien.

2nd. Harrison & Lyons, landlords, for rent, 1,000.00; also, for taxes, 838.50; also, 45 days' insurance, 37.50, with 5 % interest on said sums from 29th December, 1874, day of judicial demand.

3rd. Dr. J. D. Brems for supplies furnished the plantation, 936.00; with 8 % interest from 5th June, 1874; item $600, for profes-
33 sional services, being rejected by the court for want of jurisdiction, and item $64.00, for family supplies, for want of a lien.

And it is further ordered and decreed that after disposing of said proceeds as above directed, and satisfying all legal costs and charges, any balance that may remain in the hands of the marshal shall be paid over to Yznaga del Valle, to be applied to the satisfaction of his claim.

Motion for new trial.—Entered & filed April 13th, 1875.

U. S. circuit court dist. of La.

A YZNAGA DEL VALLE *vs.* LEMUEL P. CONNER. } No. 7120.

On motion of Geo. L. Bright, atty. for the plaintiff, A. Yznaga del Valle, it is ordered that Messrs. Harrison & Lyons, (M. M. Cohen & A. Pitot, attys.,) shew cause on Saturday, 24th April, 1875, at 11 a. m., why the judgment rendered on the rule taken by them on the 13th January, 1875, and on their petitions of interventions and 3rd opposition should not be set aside and a new trial granted on the grounds—

1°. The judgment rendered on the rule of 13th January, 1875,
34 is contrary to law and evidence, for this—

(*a*) That the rule claims the release of the seizure made of the seed-cane on the ground "that the seed-cane is immovable by destination, and under the laws of Louisiana cannot be sold separately from the land, which land is not seized in this case, and which seed-cane is absolutely necessary for the making of the coming crop."

And the evidence and the admission of Harrison & Lyons shews, that the plantation was rented by them to Lemuel P. Conner, and the seed-cane belonged to him at the time of seizure.

(*b*) And the law is that seed-cane is not and cannot be an immovable by destination unless placed on the land by the owner of the land *upon upon it* for the service and improvement of the tract of land, and cannot be an immovable when placed there by a lessee. (See C. C., 468; C. N., 527; 3 Marcade, p. 339, 340, 341; Sirey Code Nap., p. 234; Journal du Palais, V. Beins, p. 515; No. 50, 51, 54, 55, 64, 15, 17.)

2°. The judgment that gives to Harrison & Lyons $1,000 and $838.50 for taxes, and $37.50 for insurance premium, and 5 %
35 interest from 29th December, 1874, is contrary to law and evidence, for this—

(*a*) In the original petition of Harrison & Lyons, filed December 8th, 1874, they claimed by virtue of a written lease $10,000 and $900, and after Yznaga del Valle had proved that this lease had been cancelled and annulled, and after he had released his seizure of the lease because of this extravagant claim, the said Harrison & Lyons were estopped from setting up any other lease, and from shifting their cause of action.

(*b*) Because although the intervenors may have a lien for $1,000 they have none for the taxes and the insurance, because the evidence does not establish the correctness of the item $838.50 for taxes.

(*c*) Because the proceeds of the sale, being in the hands of the marshal, no interest can be due to the plaintiff after it got into the hands of the marshal, and by the intervenors' shewing nothing could be due to him before the 1st January, 1875.

Received from the clerk of the *clerk* a copy of the within rule, &c., April 14th, 1875.

(Signed) M. M. COHEN,
Atty. for Harrison & Lyons.

36 *Order.—New trial refused. Extract from the minutes, May 8th, 1875.*

A YZNAGA DEL VALLE, *vs.* LEMUEL P. CONNER. } No. 7120.

The rule for a new trial in this cause was called up.

George L. Bright for mover; M. M. Cohen and A. Pitot for defendants in rule.

When, after hearing argument, it is ordered that the rule be discharged and a new trial refused with costs.

Judgment from judgment book.—No. 8, fol. 188.

Circuit court of the United States, fifth circuit and district of Louisiana, November term, 1874.

NEW ORLEANS, *Friday, April 9th*, 1875.

Court met pursuant to adjournment. Present, Hon. W. B. Woods, circuit judge.

A. YZNAGA DEL VALLE *vs.* LEMUEL P. CONNER. } No. 7120.

The parties having in writing waived the jury, the rule to dis-
37 miss the seizure of certain seed-cane and the interventions in the cause came on to be heard before the court upon the pleadings and proofs, and were argued by counsel.

On consideration whereof the court finds generally for the plaintiffs, in the rule taken on 13th January, 1875, and it is therefore ordered that said rule be sustained and that the seizure of said seed-cane, made at the instance of Yznaga del Valle, be set aside.

It is further adjudged and decreed that the intervention of Sebastian Gomez be dismissed, he having lost his lien and privilege for neglecting to have his claim recorded, as required by law.

It is further adjudged and decreed that the lien and privilege of the other intervenors be recognized, and that they be paid by preference out of the proceeds in this case in the hands of the marshal, the following sums, to wit;

1st. Jeremiah Supples, advance for making crop, $1,188.83, with 5 % interest from 11th Nov., 1874; item $118.13½, family supplies, being rejected for want of lien.

2nd. Harrison & Lyons, landlords, for rent, 1,000.00; also for
38 taxes, 838.50; also for 45 days' insurance, 37.50, with 5 % interest on said sums from 29th December, 1874, day of judicial demand.

3rd. Dr. J. D. Brems, for supplies furnished the plantation, 936.00, with 8 % interest, from 5th June, 1874; item $600 for professional services being rejected by the court for want of jurisdiction, and item $64.00, for family supplies, for want of a lien.

And it is further ordered and decreed that after disposing of said proceeds, as above directed, and satisfying all legal costs and charges, any balance that may remain in the hands of the marshal shall be paid over to Yznaga del Valle, to be applied to the satisfaction of his claim.

Judgment rendered April 9th, 1875.

Judgment signed May 10th, 1875.

(Signed) W. B. WOODS,
Judge.

Petition for writ of error.—Filed May 20th, 1875.

A. YZNAGA DEL VALLE
vs.
LEMUEL P. CONNER. } No. 7120.

39 To the hon. the judges of the circuit court of the United States for the fifth circuit and district of Louisiana:

The petition of A. Yznaga del Valle, the plaintiff, respectfully represents that a final judgment was rendered on the 9th day of April, 1875, and signed on the 10th day of May, 1875, against your petitioner and in favor of Harrison & Lyon, ordering that the seizure of the seed-cane, made at the instance of your petitioner, be set aside.

And that the intervenors, Harrison & Lyons, landlords, be paid for rent, $1,000.00; also for taxes, 838.50; also 45 days' insurance, 37.50, $1,876.00, with 5 % inerest on said sums from 29th December, 1874, day of judicial demand.

Your petitioner shews that the value of the aforesaid seed-cane, as fixed by the agreement made between the parties and filed March 25th, 1875, is seventeen hundred and fifty dollars.

Your petitioner shews that he is aggrieved by said judgment, and desire' to prosecute a writ of error from the same.

40 Your petitioner shews that the net proceeds of the property seized and sold by order of the marshal is $91,170.00.

That the marshal, by order of court, has now in his possession and holds to answer the claim of Harrison & Lyons a sufficient amount to satisfy it; that the seed-cane ordered to be released from seizure was delivered to the said Harrison & Lyons, in compliance with the agreement filed on 25th March, 1875.

Your petitioner prays that a writ of error to operate as a supersedeas be allowed him from said judgment, returnable to the Supreme Court of the United States on executing such bond as the court and the law may require.

And pray for general relief.

(Signed) GEO. L. BRIGHT,
Counsel for Plaintiff.

Geo. L. Bright, counsel for petitioner, sworn, says that all and singular the allegations in the foregoing petition are true.

(Signed) GEO. L. BRIGHT.

Sworn to and subscribed before me this 14th day of May, 1875.

(Signed) F. B. VINOT,
Commr. of the U. S. Circuit Court, Dist. of La.

41 *Order.—Writ of error refused.—Extract from the minutes, May 21st, 1875.*

A. YZNAGA DEL VALLE
vs.
LEMUEL P. CONNER. } No. 7120.

On due consideration of the facts of this case and of the law, it is ordered that the writ of error applied for by the plaintiff be refused.

Petition for writ of error and order.—Filed Decr. 24th, 1875.

In the circuit court of the United States for the fifth circuit & district of Louisiana.

A. YZNAGA DEL VALLE
vs.
LEMUEL P. CONNER. } No. 7120.

To the honorable J. P. Bradley, associate justice of the Supreme Court of the United States:

The petition of A. Yznaga del Valle, the plaintiff, respectfully represents that a final judgment was rendered on the ninth day of April, 1875, and signed on the tenth day of May, 1875, against your petitioner and in favor of Harrison & Lyon, ordering that the seizure of the seed-cane made at the instance of your petitioner be set aside, and that the intervenors, Harrison & Lyons, landlords, be paid, for rent, $1.000.00; also for taxes, 838.50; also 45 days' insurance, $37.50—$1,876.00, with 5 % interest on said sums from December 29th, 1874, day of judicial demand.

42

Your petitioner shows that the value of the aforesaid seed-cane as fixed by the agreement made between the parties, and filed March 25th, 1875, is seventeen hundred and fifty dollars.

Your petitioner shows that he is aggrieved by said judgment, and desires to prosecute a writ of error from the same.

Your petitioner shows that the nett proceeds of the property seized and sold by order of the marshal is $9,170; that the marshal has now, by order of court, in his possession, and holds to answer the claim of Harrison & Lyons, a sufficient amount to satisfy it; that the seed-cane ordered to be released from seizure was delivered to Harrison & Fowler in compliance with the agreement filed on 25th March, 1875.

43

Your petitioner prays that a writ of error to operate as a supersedeas be allowed him from said judgment, returnable to the next term of the Supreme Court of the United States, on executing such bond as the court & the law may require.

And for general relief.

(Signed) DURANT & HORNOR, *for selves*, &
" GEO. L. BRIGHT, *Atty's for Petitioner.*

12, 16, '75.

Order allowing writ of error.

I allow the writ of error as prayed for above.
December 20th, 1875.

JOS. P. BRADLEY,
Asso. Justice Sup. Court

Order of Judge Woods fixing am't of bond.

Considering that the property and moneys in controversy are in the

possession of the marshal and of the opponents, Harrison & Lyons, let the amount of the bond be fixed at one thousand dollars to secure the sum recovered for the use or detention of the property and
44 money, and the costs of the suit and just damages for delay and costs and interest on the writ of error.

New Orleans, Decr. 24th, 1875.

(Sign'd) W. B. WOODS,
U. S. Judge.

Bond for writ of error.—Filed Decr. 24th, 1875.

A. YZNAGA DEL VALLE
vs.
LEMUEL P. CONNER. } No. 7120.

UNITED STATES OF AMERICA:

Know all men by these presents that we, Antonio Yznaga del Valle, as principal, and José Martinez del Campo, as surety, are held and firmly bound, jointly and severally, unto Harrison & Lyons, intervenors and 3rd opponents in the suit of Antonio Yznaga del Valle vs. Lemuel P. Conner, No. 7120 of the docket of this court, in the sum of one thousand ($1,000) dollars, lawful money of the United States of America, to be paid to the said Harrison & Lyons, heirs, executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and
45 dated the 23rd day of December, in the year of our Lord eighteen hundred and seventy-five.

Whereas A. Yznaga del Valle has this day presented a petition to the honorable J. P. Bradley, associate justice of the Supreme Court of the United States, praying that a writ of error be allowed him, to operate as a supersedeas, from a final judgment rendered on 9th April, 1875, and signed on 10th May, 1875, against him and in favor of Harrison & Lyon, and which has been allowed:

Now, the condition of the above obligation is, that we, the above-bounden Antonio Yznaga del Valle and José Martinez del Campo, will well and truly pay to the said Harrison & Lyons all such damages as they may recover, and any such sum as the defendants, Harrison & Lyons, may recover for the use and detention of the property and money and the costs of the suit and just damages for delay, and costs and interest on the writ of error in case it should be decided that the said writ of error was wrongfully obtained.

(Signed) A. YZNAGA DEL VALLE, [L. S.]
By his atty., GEO. L. BRIGHT.
(Signed) JOSÉ MARTINEZ DEL CAMPO. [L. S.]

Signed, sealed, and delivered in the presence of—
F. B. VINOT.

Approved.

W. B. WOODS,
U. S. Judge.

46 DISTRICT OF LOUISIANA, *ss:*

José Martinez del Campo, surety on the within bond, being duly sworn, says that he resides in the city of New Orleans, Louisiana; that he is worth the sum of one thousand dollars over and above his debts and liabilities and property exempt from execution.

(Signed) JOSÉ MARTINEZ DEL CAMPO.

Subscribed and sworn before me this 24th day December, 1875.
(Signed) F. B. VINOT,
Commr. of U. S. Circuit Court, District of Louisiana.

47 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 46 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had on the trial of the case of Antonio Yznaga del Valle versus Lemuel P. Conner, Charles K. Harrison, and Samuel H. Lyon, intervenors and third opponents, No. 7120 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court at the city of New Orleans this 21st day of January, A. D. 1876.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, William B. Woods, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 21st day of January, A. D. 1876.

W. B. WOODS, *Judge.*

48 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between Antonio Yznaga del Valle, plaintiff, and Harrison & Lyons, intervenors & 3d opponents in the suit entitled Antonio Yznaga del Valle versus Lemuel P. Connor, No. 7120 of the docket of said circuit court, a manifest error hath happened, to the great damage of the said Antonio Yznaga del Valle, as by his complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court of the United States, this 24th day of December, in the year of our Lord one thousand eight hundred and seventy-five.

[SEAL.] F. A. WOOLFLEY,
Clerk of the United States Circuit Court for the District of Louisiana.

(Indorsed:) United States circuit court. No. 7120. Antonio Yznaga del Valle, plff. in error, versus Harrison & Lyons, defts. in error. Writ of error. Filed Dec. 24th, 1875. F. B. Vinot, dy. clk.

49 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to Charles K. Harrison and Samuel H. Lyon, residents of the city of Baltimore, State of Maryland, or to their attorneys, Armand Pitot and M. M. Cohen, of New Orleans, greeting:

You and each of you are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error & an order allowing it, filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Antonio Yznaga del Valle is plaintiff in error and you & each of you are defendants in error in the case entitled Antonio Yznaga del Valle versus Lemuel P. Connor, No. 7120 of the docket of said circuit court, and wherein you and each of you are intervenors and third opponents, to show cause, if any there be, why the judgment rendered against the said Yznaga del Valle, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 24th day of December, in the year of our Lord one thousand eight hundred and seventy-five.

W. B. WOODS, *Judge.*

Marshal's return.

50 Received Dec. 27, 1876, by the U. S. marshal, and on the 27th day of December, 1876, served a copy hereof on Chs. K. Harrison and Samuel H. Lyon, defendants in error, by handing the same to M. M. Cohen, their attorney of record, in person in this city.

S. B. PACKARD, *U. S. Marshal.*
By C. R. STEELE, *Dy. Marshal.*

On this 17th day of January, 1876, personally appeared before me the subscriber, C. R. Steele, a deputy U. S. marshal, & makes oath that he served a copy of the within citation on Chs. K. Harrison and on Samuel H. Lyon as stated in his official return hereon.

C. R. STEELE,
Dy. U. S. Marshal.

Sworn to and subscribed before me this 17th day of January, 1876.

F. B. VINOT,
U. S. Commr.

(Indorsed:) United States circuit court. No. 7120. Antoine Yznaga del Valle, plaintiff in error, vs. Charles K. Harrison and Samuel H. Lyon, defendants in error. Citation.

(Indorsement on cover:) No. 765. Antonio Yznaga del Valle, plaintiff in error, vs. Charles H. Harrison & Samuel H. Lyons, intervenors & 3d opponents. Louisiana C. C. U. S. Filed 9th October, 1876.

No. 765.

In the Supreme Court

OF THE UNITED STATES.

ANTONIO YZNAGA DEL VALLE,

PLAINTIFF IN ERROR,

vs.

CHARLES K. HARRISON AND
SAMUEL H. LYON.

Brief on motion to Dismiss the Writ of Error.

No. ——.

In the Supreme Court

OF THE UNITED STATES.

ANTONIO YZNAGA del VALLE,
PLAINTIFF IN ERROR,
vs.
CHARLES K. HARRISON
AND
SAMUEL H. LYON,
DEFENDANTS IN ERROR.

IN THE
UNITED STATES
Circuit Court.
District of Louisiana.
No. 7120.

Brief of Defendants in Error, on the motion to dismiss the Writ of Error, as the amount of judgment, the matter in dispute, is less than $5000.

The Writ of Error in this case was first requested of Judge Woods and refused by him after argument. Subsequently it was granted by Justice Bradley. The grounds on which the counsel for Defendants in Error opposed the granting of the writ before Judge

Woods, and on which they have moved to dismiss said Writ, are as follows:

By the 3rd Section of the Act of Congress, approved February 16th, 1875, (Statutes of the United States 1874-5, page 315, chap. 77) entitled "An Act to facilitate the disposition of cases in the Supreme Court of the United States and for other purposes," it is provided that, whenever by the laws now in force, it is required that the matter in dispute shall exceed the sum or value of $2,000, exclusive of costs, in order that the judgments and decrees of the Circuit Court of the United States may be re-examined in the Supreme Court, such judgments and decrees hereinafter rendered shall not be re-examined in the Supreme Court, unless the matter in dispute shall exceed the sum or value of five thousand dollars, exclusive of costs.

The judgment in the case at bar, the matter in dispute, being for less than $5,000 is not re-examinable in the Supreme Court of the United States.

But the counsel for Plaintiff in Error contended that this case was saved from the operation of the 3rd Section of the Act above recited by virtue of the 4th Section, which provides that this Act shall take effect on the first day of May, 1875, and that the judgment was rendered prior to that date.

On the other hand we contend that, though there was a judgment before the 1st of May, 1875, yet

that judgment was unappealable and unsi
not final, by reason of an application f
made by Plaintiff in Error: that the tr
of the Act is that on final judgments or decrees rendered after that date, no Writ of Error shall be allowed after the 1st of May, 1875, if the matter in dispute does not exceed $5,000.

That the Act refers to such judgments or decrees from which a Writ of Error may be taken.

In the present case the judgment was *signed on the 10th of May*, 1875, and that is the date when judgment was rendered in the sense of the Act of 16th February, 1875.

Writs of Error are confined to final judgments.

Barton vs. Forsyth, 5 Wallace, 190.

LOUISIANA DECISIONS.

1°. Judgments are final when signed. (Stark vs. Burke, 9 A. R. 344).

Hennen's (La.) Digest, page 726, No. 10.

2°. A judgment is not complete, nor does it take effect, until actually signed. (3 M. R. 389, 5 N. S. 105, 320, 4. R. R, 52, 7 R. 451).

Hennen's Digest, p. 730, Nos. 1, 2, 4.

3°. A judgment has no effect until signed. (Succession of Ashbridge, 1st A. R. 204.)

Hennen's Digest, 731, No. 18.

Woods, and on which they have moved to dismiss said Writ, are as follows :

By the 3rd Section of the Act of Congress, approved February 16th, 1875, (Statutes of the United States 1874-5, page 315, chap. 77) entitled "An Act to facilitate the disposition of cases in the Supreme Court of the United States and for other purposes," it is provided that, whenever by the laws now in force, it is required that the matter in dispute shall exceed the sum or value of $2,000, exclusive of costs, in order that the judgments and decrees of the Circuit Court of the United States may be re-examined in the Supreme Court, such judgments and decrees hereinafter rendered shall not be re-examined in the Supreme Court, unless the matter in dispute shall exceed the sum or value of five thousand dollars, exclusive of costs.

The judgment in the case at bar, the matter in dispute, being for less than $5,000 is not re-examinable in the Supreme Court of the United States.

But the counsel for Plaintiff in Error contended that this case was saved from the operation of the 3rd Section of the Act above recited by virtue of the 4th Section, which provides that this Act shall take effect on the first day of May, 1875, and that the judgment was rendered prior to that date.

On the other hand we contend that, though there was a judgment before the 1st of May, 1875, yet

that judgment was unappealable and unsignable and not final, by reason of an application for new trial made by Plaintiff in Error: that the true meaning of the Act is that on final judgments or decrees rendered after that date, no Writ of Error shall be allowed after the 1st of May, 1875, if the matter in dispute does not exceed $5,000.

That the Act refers to such judgments or decrees from which a Writ of Error may be taken.

In the present case the judgment was *signed on the 10th of May*, 1875, and that is the date when judgment was rendered in the sense of the Act of 16th February, 1875.

Writs of Error are confined to final judgments.

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1°. Judgments are final when signed. (Stark vs. Burke, 9 A. R. 344).

Hennen's (La.) Digest, page 726, No. 10.

2°. A judgment is not complete, nor does it take effect, until actually signed. (3 M. R. 389, 5 N. S. 105, 320, 4. R. R. 52, 7 R. 451).

Hennen's Digest, p. 730, Nos. 1, 2, 4.

3°. A judgment has no effect until signed. (Succession of Ashbridge, 1st A. R. 204.)

Hennen's Digest, 731, No. 18.

4°. No appeal lies from a judgment before it is signed. The judgment is inchoate and the appeal premature.

Hennen's Digest, p. 23, No. 12. Eight decisions on the same principle.

5°. A judgment is inchoate during the delays allowed to move for a new trial.

McWillie vs. Perkins, 20 Annual (La) 168.

By the Louisiana Revised Civil Code, Article 3322, the judicial mortgage takes effect from the day on which the judgment is rendered. But on the 3rd day of May, 1875, the Supreme Court of Louisiana, in Marchall vs. Hooker, No. 5724, held that the Registry of an unsigned judgment did not operate as a mortgage before signing.

A judgment not signed cannot be made the basis of prescription.

Bynum vs. Gordon, 24 Annual (La.) 160.

In Life and Fire Insurance Company of New York, vs. Wilson's Heirs, the Supreme Court of the United States recognized the practice of the United States Courts in Louisiana to sign judgments as provided in the Code of Practice of Louisiana, Section 3, Art. 546. 8 Peters, 303-5

Respectfully submitted
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Of Counsel for Sylvie [illegible]

In the Supreme Court of the United States.

October Term, 1876.

YZNAGA DEL VALLEE,
Plaintiff in Error,
vs.
HARRISON et al.

No. 765.

Brief for Plaintiff in Error on Motion to Dismiss.

The judgment in this case was *rendered* April 9, 1875, and *signed* on May 10, 1875. The amount of the judgment [with interest] is over $2,000, but under $5,000. The motion to dismiss is based [see act of February 16, 1875, 18 S. L., 315] on two grounds: 1st. That *final* judgment was *given* May 10, 1875; 2d. That the amount of the judgment is less than $5,000. The second ground is admitted; the first ground is denied. The position of defendants in error is, that as the judgment in contestation here was rendered *before* 1st May, 1875, and signed *after* May 1, 1875, it does not come within the words or the meaning of the act, which provides "that this act shall "take effect on May 1, 1875."

The act of Congress was made for the government of the circuit court of the United States for Louisiana; but not solely. We must so construe the act as to adapt it to *all* the United States circuit courts. The practice in these

tribunals must be made to harmonize as closely as possible with that of the State courts.

U. S. R. S., 914, *et seq.*

Now the language of the act is prohibitory. "Such "judgments and decrees hereafter rendered shall not be "re-examined in the Supreme Court, unless," &c. Your Honors are bound to refrain from the exercise of your appellate jurisdiction over judgments and decrees *hereafter rendered* by United States circuit courts, where the matter in dispute is for $5,000 or under in sum or value.

But the legislature had in mind ALL *judgments and decrees* HEREAFTER RENDERED *by all circuit courts.* The peculiar system of Louisiana practice requiring judgments to be signed was quite out of sight.

C. P. of 1870, art. 546: "The judge must sign all definitive or final judgments rendered by him, but he shall "not do so until three judicial days have elapsed, to be "computed from the day when such judgments were given: "provided, that hereafter, (except in the parish of Orleans,) "all motions for new trials in causes shall be made and "determined, and all final judgments signed, before the "adjournment of the court for the term at which such causes "were tried, and whether three judicial days shall have "elapsed or not."

The language of the act of Congress, therefore, is clearly in favor of the right to the writ of error, for the judgment herein was confessedly "*rendered*" prior to May 1, 1875.

But whilst in Louisiana some judgments must be signed before they become executory, this practice is unknown in some other States. The finality of some judgments is tested, under Louisiana law, by the signature of the judge; the finality of other judgments, particularly those of an

interlocutory character, is tested not in the slightest degree by the presence of the judge's signature, or by lapse of time, but by the characteristic of its *working an irreparable injury.* When an interlocutory judgment may cause him an irreparable injury, the party against whom it has been rendered may appeal therefrom. (C. P. of 1870, art. 566: "One may likewise appeal from all interlocu- "tory judgments, when such judgments may cause him an "irreparable injury.") Such interlocutory judgments are never, or very rarely, *signed.*

12 La., 150, Van Winkle *vs.* Flécheaux.
11 Rob., 160, Kraeutler *vs.* U. S. Bank.
1 Annual, 334, Fox *vs.* Tio.

The entire matter is involved in the doctrine of "the "thing adjudged," the basis of which must be a *final* judgment of course. It is believed under the old law of England that the finality of a judgment to operate "an estoppel "by an adjudication of a matter in a court of competent "jurisdiction" depends, after a trial on the merits, on the *lapse of time*, which changes with the circumstances of each case. If nothing be done to delay the finality within the time prescribed by the practice of the court or the law, execution may issue either at once or within a few days of the verdict and judgment; but a motion for a new trial or in arrest of judgment must be disposed of before execution on the judgment can be legally perfected or the judgment itself be successfully pleaded as an estoppel. An execution issued too soon cannot, however, be treated as *absolutely void* where it has *a rendered judgment* to support it. So, too, in the former English system, a writ of error might be obtained either before or after judgment rendered, although a motion for a new trial or a motion in

arrest of judgment were pending and undecided when the writ of error is brought.

See 15 Ed., 4, 18, quoted in Fitzherbert, N. B., p. 20.
See, also, Viner's Abridgment, *verbo* error.
Somerville *vs.* White, 5 East., 145.
Payne *vs.* Whaley, 2 B. & P., 137.

Now, it so happens that the law of Louisiana is identical with this doctrine as to appeals.

McGregor *vs.* Barker, 12 La. An., 289.
Green *vs.* Huey, 23 La. An., 704.
Mouton *vs.* Broussard, 25 La. An., 497.

Indeed, in this District, where common law prevails almost unadulterated by statute, the judge, by timely granting *ex officio* a new trial, may avoid a pending application for a review of his action by the court *in banc.*

The same result would flow from the writ of error granted to a circuit court of the United States pending a motion for a new trial. If the new trial be refused, the writ of error continues in full force and virtue; if it be granted, the writ of error dies *eo instanti* probably, but most unequivocally at the end of the term to which it is made returnable.

Fitzherbert, N. B., p. 20, G., *writ de error.*

By express statute in Louisiana, "a judgment when *once* "*rendered* becomes the PROPERTY of him in whose favor it "has been given," &c.

Code of Practice of 1870, art. 548: "A judgment, when "once rendered, becomes the property of him in whose fa- "vor it has been given; and the judge cannot alter the "same, except in the mode provided by law."

A legal doctrine which was emphasized in—

State of Penna. *vs.* Wheeling B., 18 Howard, 431.

But if it be true that the creditor has a vested right in a rendered judgment, the debtor has an equally vested right to have it reviewed by writ of error. This right to a writ of error vested on the rendition of the judgment the very same moment when the rendered judgment became the property of the creditor.

But is not the *rendition* of a judgment the matter of *substance?* And is not the *signing* of a judgment the matter of *form* merely? The slightest examination of the subject will reply affirmatively to both questions.

The rendition of a judgment is exclusively a *judicial* act, even when the prothonotary enters a judgment on confession. The signing of a judgment approaches very nearly to, if it be not entirely coincident with, a *ministerial* act. (Insurance Co. *vs.* Wilson, 8 Peters, 304.) It takes the place of a term of court. It obviates the necessity of "terms" in large cities where the court is continuously open for months. (See C. P. 546, cited at length above.) It marks the finality of the judgment; and the cessation of all farther jurisdiction of the judge rendering it over its subject-matter, in case of an appeal, which appeal shall stay execution, "and *all further proceedings*, until definitive judg-"ment be rendered on the appeal," &c., &c.

C. P., art. 575: "If the appeal has been taken within "ten days, not including Sundays, after the judgment has "been notified to the party cast in the suit, when such no-"tice is required by law to be given, it shall stay execution "and all further proceedings, until definitive judgment be "rendered on the appeal: provided the appellant gives his "obligation, with good and solvent security, residing within

" the jurisdiction of the court, in favor of the clerk of the " court, rendering the judgment, for a sum exceeding by one- " half the amount for which the judgment was given, if the " same be for a specific sum, as security for the payment " of the amount of such judgment, in case the same is af- " firmed by the court to which the appeal is taken. Ap- " peal-bonds, in all cases of appeal, shall be made payable " to the clerk of the court which rendered the judgment " appealed from, and any appellee interested in the appeal " shall have recourse on such appeal-bonds against the ap- " pellant, and the securities on the appeal-bond, for any " liability that may accrue in favor of the appellee on ac- " count of such appeal.

" Whenever an answer has been filed in a suit in which " the defendant has had personal service made upon him " to appear and file his answer, or when a judgment has " been rendered in a case after answer filed by the defend- " ant, or by his counsel, the party cast in the suit shall be " considered duly notified of the judgment, by the fact of " its being signed by the judge: provided that in the coun- " try parishes no execution shall issue, in cases where an " appeal lies, until ten days after the adjournment of the " court by which the judgment was rendered, within which " delay a party may take a suspensive appeal on filing peti- " tion and appeal-bond, as now provided by law.

" In the second judicial district court for the parish of Jef- " ferson no execution shall issue, in cases where an appeal " lies, until ten days, not including Sundays, after the judg- " ment has been notified to the party cast in the suit, or un- " til ten days, not including Sundays, after the signing of " the judgment, where no other notice is necessary, within " which delay a party may take a suspensive appeal, on " filing petition and appeal-bond, as provided by law."

That the preceding views of Louisiana law are well

founded may be readily proved by referring to C. P., art. 593: "No appeal will lie, except as regards minors, after "a year has expired, to be computed from the day on "which the final judgment was rendered, if the party "claiming the same reside in the State, and after two years "if he be absent therefrom."

"This delay, as relates to minors, must be computed "from the day of their becoming of age."

But "*the final judgment rendered*" is inchoate till signed, under Louisiana law; and the time specified does not begin to run till the judgment is signed. For, if it did, more than a year might readily intervene between the rendition and the signing, and thus all right of appeal be extinguished: a result which would look like absurdity. (Bank *vs.* Mark Walton, 7 Rob., 451.) In short, a judgment under the common-law system becomes final and executory *by lapse of time;* but under the civil law, it becomes final and executory *by the signature of the judge.*

Under the authorities cited, no doubt can be entertained that, on the 9th April, 1875, a vested right to a writ of error under the common law, and to an appeal under Louisiana law, existed in favor of the plaintiff in error here, and that he might avail himself of it. The act of February 16, 1875, could not deprive him of it without inextricably merging the judicial in the legislative department of our Government.

We pray your Honors to deny the motion to dismiss.

Respectfully submitted.

DURANT & HORNOR,
Attorneys for Plaintiff in Error.

WASHINGTON, D. C., *November* 9, 1876.